



1 records related to Mr. Kytile's fitness to drive commercially), and the subpoena is attached following  
2 forty-nine other pages of exhibits (Doc. # 50-5), their memorandum of law made no mention of the  
3 compliance deadline. Nor did Defendant include a request for an order shortening time on the standard  
4 briefing schedule for motions set forth in Local Rule 7-2, or otherwise request an expedited briefing  
5 schedule or hearing. No proposed order was submitted seeking such relief. In sum, Defendant failed  
6 to apprise the court there was a sense of urgency related to the disposition of this motion. Therefore,  
7 the motion was to proceed along the normal briefing schedule outlined in Local Rule 7-2, and the court  
8 would determine, in its discretion, whether a hearing was warranted pursuant to Local Rule 78-2.

9       Apparently realizing this omission, on December 18, 2013, Defendant filed an Emergency  
10 Motion to Quash and Affidavit of Austin Oyler. (Doc. # 52.) Defendant incorporates its motion to  
11 quash and points and authorities, but now requests that the motion be heard as an emergency motion  
12 pursuant to Local Rules 7-5(d) and 26-7 because the subpoena compliance date is December 18, 2013.  
13 Defendant also mentions the rapidly approaching discovery deadlines including the January 8, 2014  
14 rebuttal expert disclosure deadline and discovery deadline of February 7, 2014.

15       Plaintiff has now filed a response to Defendant's request that the motion to quash be heard as  
16 an emergency motion. (Doc. # 53.) In essence, Plaintiff argues that it should be permitted to file a  
17 substantive response to the motion to quash and the request to characterize Defendant's motion as an  
18 emergency prevents him from doing so. Importantly, Plaintiff represents that "no records were  
19 produced on January 18, 2013, pursuant to the subpoenas at issue, the subpoenaed treater entities are  
20 on notice of USF's Motion to Quash (Docket No. 52, pp. 8-25), and if any records are produced  
21 Plaintiff will hold them without review pending the Court's ruling." (Doc. # 53 n. 1.)

22       Defendant is undoubtedly now aware that with a subpoena compliance date of December 18,  
23 2013, it should have originally filed its motion to quash as an emergency motion pursuant to Local  
24 Rule 7-5. Defendant is also undoubtedly aware that it should not have waited until the day of the  
25 subpoena compliance deadline to seek emergent relief from the court.

26       That being said, in light of Plaintiff's representation that the records have not been produced  
27 and that the medical providers are awaiting a ruling on Defendant's motion to quash, at least one of  
28 the two proffered reasons for filing the motion to quash as an emergency motion no longer exists. The

1 second reason for treating the motion as an emergency is the rapidly approaching discovery deadlines.  
2 Since the records will not be produced until the court issues an order on the motion to quash, an  
3 expedited briefing schedule and hearing are not necessary. Accordingly, a hearing will be scheduled  
4 after briefing is completed, when the court's and parties' schedules will permit. If the court needs to  
5 adjust the discovery deadlines as a result of its determination on the motion to quash, it will address  
6 that topic at the hearing on the motion to quash. In the interim, compliance with the subpoenas at issue  
7 is **STAYED** pending further order of the court.

8 **IT IS SO ORDERED.**

9 **DATED: December 19, 2013.**

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11 **WILLIAM G. COBB**  
12 **UNITED STATES MAGISTRATE JUDGE**  
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